IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

SPL. APPL. WRIT No. 205 of 2007

STATE & ANR.
V/S
LRS OF LATE ASU KHAN

Mr. VK MATHUR, for the appellant / petitioner

Mr. GR PUNIA, for the respondent
Mr. NM LODHA, AAG.

Date of Order : 30.10.2007

HON'BLE SHRI N P GUPTA,J.
HON'BLE SHRI MUNISHWAR NATH BHANDARI,J.

ORDER

The matter comes up for consideration of stay petition. However, at the request of learned counsel for the parties, the matter has been finally heard.

By the impugned order, the learned Single Judge has directed the writ petitioner to be treated as a confirmed Inspector Gr.II w.e.f. 12.6.1995. A further direction has been given to the effect that if the petitioner is found suitable for promotion, then the same be accorded to him, and monitory benefits accruing in his favour be paid to his legal representatives. The other direction was given about the family pension to the widow of the appellant to be duly modified accordingly.

The facts of the case are that the writ petitioner

filed the writ petition in the year 1995, alleging inter-alia to have been appointed initially as Inspector Gr.II in the year 1971. Then he was confirmed w.e.f. 1.4.1977 vide order dated 8.5.1980. Then it is alleged that persons junior to the writ petitioners have already been promoted as ACTO, while he was not so promoted. It was also alleged that by virtue of Rule 18, the employee who has attained the age of 45 years on or before 1.1.1982, is exempted from appearing in the departmental examination. The petitioner in the writ petition challenged this date dated 1.1.1982 to be arbitrary, inter-alia with this, it is prayed, that it be declared that the petitioner is not required to clear the departmental examination since he has attained the age of 45 years. A prayer was also made to the effect that the respondents be directed to consider the case of the petitioner in the ensuing D.P.C. for his promotion as ACTO, and if found suitable, be promoted with effect from a date when a person junior to him was so promoted with all consequential benefits.

A reply has been filed, inter-alia to the effect, that as a matter of fact vide order dated 12.9.97/25.9.97, the petitioner has been deconfirmed by passing a detailed order, and therefore, he cannot seek any benefit under Rule 18, and that in view of this order, produced as Annex.R/1, the petitioner is not entitled to any promotion. It was also contended that merely by crossing the age of 45 years,

since the petitioner failed to clear the departmental examination earlier, he is not entitled to claim any promotion, without appearing in the examination.

It transpires that during pendency of the writ, the petitioner expired on 9.10.2004 and application was filed for substitution of legal representatives, on which application, the matter came up on 24.8.2005, on which date the learned Single Judge allowed that application for substitution, and decided the writ petition also. It was inter-alia found by the learned Single Judge, that of course there was no occasion for confirming the petitioner before 12.6.1995 as till then he was required to qualify departmental examination, and he failed to do so. However, since admittedly the petitioner completed the age of 45 years on 12.6.1995, and therefore, in view of the provisions of Rule 18, the petitioner was not required to qualify the examination thereafter. As such, in any case, services of the petitioner are required to be confirmed w.e.f. 12.6.1995. Inter-alia with these findings, the above directions have been given.

It may, by the way be observed here, that the learned counsel for the writ petitioner-respondent informs, that the date 1.1.1982 as mentioned in Rule 18 has already been struck down by the Division Bench. Be that as it may.

What we find is, that it is not in dispute, that as a matter of fact, by an express order dated 8.5.1980, the writ petitioner was confirmed w.e.f. 1.4.1977. It is a different story, as to whether an order of deconfirmation could be passed after 17 years, in the manner done, more particularly during pendency of the writ petition, on the face of the provisions of Rule 18, which clearly exempts such employee, who have completed 45 years of age. Admittedly, the petitioner did complete the age of 45 years on 12.6.1995. In that view of the matter, when the learned Single Judge, notwithstanding the order of 8.5.1980, has not treated the writ petitioner to be confirmed since 1977, but has treated to be confirmed only on his completing 45 years of age since 12.6.1995, in our view, no fault can be found in such finding.

The appeal thus, has no force and is dismissed.

(MUNISHWAR NATH BHANDARI),J. (N P GUPTA),J.

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